No. 25-466

In the Supreme Court of the United States

ONGKARUCK SRIPETCH, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether a showing that investors suffered pecuniary harm is a prerequisite to an award of disgorgement in a civil action brought by the Securities and Exchange Commission.

PARTIES TO THE PROCEEDING

Petitioner (defendant-appellant below) is Ongkaruck Sripetch.

Respondent (plaintiff-appellee below) is the Securities and Exchange Commission.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 154 F.4th 980. The order of the district court (Pet. App. 19a-35a) is available at 2024 WL 1546917.

JURISDICTION

The judgment of the court of appeals was entered on September 3, 2025. The petition for a writ of certiorari was filed on October 14, 2025, and granted on January 9, 2026. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix. App., *infra*, 1a-18a.

INTRODUCTION

The Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78a *et seq.*, authorizes district courts in civil actions brought by the Securities and Exchange Commission (SEC or Commission) to order "disgorgement" of "any unjust enrichment by the person who received such unjust enrichment as a result of" a violation of the Act. 15 U.S.C. 78u(d)(3)(A)(ii) and (7); see 15 U.S.C. 78u(d)(5). In this case, petitioner made millions of dollars from defrauding investors in low-priced stocks, in violation of the securities laws. The SEC filed a civil enforcement suit against petitioner, and the district court ordered him to disgorge the net profits he had gained from his scheme. Petitioner contends that he is entitled to keep that money unless the SEC can show that his fraud inflicted pecuniary harm on the victims.

Petitioner is mistaken. Disgorgement is a remedy designed to strip ill-gotten profits from wrongdoers, not to compensate victims for their losses. Indeed, petitioner recognizes that "disgorgement is measured by the defendant's wrongful profits rather than the victim's loss." Br. 36 (emphasis omitted). He insists, however, that he can be ordered to disgorge his millions in wrongful profits only upon a showing of at least one dollar of monetary harm to victims. That is incorrect. Statutory text, context, and history establish that SEC disgorgement under current law is not conditioned on a showing of pecuniary harm to victims.

Petitioner relies substantially on this Court's holding in *Liu* v. *SEC*, 591 U.S. 71 (2020), that under 15 U.S.C. 78u(d)(5), disgorged funds in SEC enforcement suits must be used to compensate victims of the violation if that can feasibly be done. Petitioner infers from that holding that disgorgement can be awarded in the first

place only if the violation caused investors pecuniary harm. The Court in *Liu*, however, construed Section 78u(d)(5), which does not specifically address "disgorgement" but instead generally authorizes "any equitable relief that may be appropriate or necessary for the benefit of investors." The current Exchange Act provisions that specifically address "disgorgement" in SEC enforcement suits, 15 U.S.C. 78u(d)(3)(A)(ii) and (7), were enacted approximately six months after the *Liu* decision. And while Section 78u(d)(3)(A)(ii) incorporates *other* limitations on disgorgement relief that the *Liu* Court had found to be implicit in Section 78u(d)(5), the new provisions contain no language requiring disgorgement awards to be used for compensatory purposes or suggesting that pecuniary harm to investors is a prerequisite to disgorgement.

The judgment of the court of appeals should be affirmed.

STATEMENT

The Securities and Exchange Commission brought this civil action against petitioner for defrauding investors in at least 20 publicly traded companies. Petitioner consented to the entry of judgment and agreed to pay disgorgement in an amount to be determined by the district court. After a hearing, the court ordered petitioner to disgorge a total of $3,303,276.93. Pet. App. 41a; see *id.* at 19a-35a. The court of appeals affirmed. *Id.* at 1a-18a.

A. Legal Background

1. "After rampant abuses in the securities industry led to the 1929 stock market crash and the Great Depression, Congress enacted a series of laws to ensure that 'the highest ethical standards prevail in every facet of the securities industry.'" *Kokesh* v. *SEC*, 581 U.S.

455, 457-458 (2017) (citation omitted). "Congress authorized the SEC to enforce the Securities Act of 1933, 48 Stat. 74, as amended, 15 U.S.C. § 77a *et seq.*, and the Securities Exchange Act of 1934, 48 Stat. 881, as amended, 15 U.S.C. § 78a *et seq.*," *Liu* v. *SEC*, 591 U.S. 71, 75 (2020), including by "conduct[ing] investigations into possible violations of the federal securities laws," *Kokesh*, 581 U.S. at 458 (citation omitted).

The Exchange Act authorizes the SEC, "[w]henever it shall appear * * * that any person is engaged or is about to engage in acts or practices constituting a violation" of the Act, to bring in federal district court a civil action "to enjoin such acts or practices." 15 U.S.C. 78u(d)(1). Beginning in the early 1970s, "courts determined" that their authority in SEC civil enforcement cases included the power to "'deprive' a defendant of 'the gains of wrongful conduct.'" *Liu*, 591 U.S. at 75 (quoting *SEC* v. *Texas Gulf Sulphur Co.*, 446 F.2d 1301, 1308 (2d Cir.), cert. denied, 404 U.S. 1005 (1971)) (brackets and ellipsis omitted). "Over the years, the SEC has continued to request this remedy, later referred to as 'disgorgement,' and courts have continued to award it." *Id.* at 75-76 (footnote omitted).

In *Kokesh*, this Court held that SEC disgorgement constituted a "penalty" for purposes of the five-year limitations period of 28 U.S.C. 2462. The Court based that conclusion in part on the fact that "in many cases, SEC disgorgement is not compensatory." 581 U.S. at 464; see *id.* at 467. The Court reserved the antecedent question "whether courts possess authority to order disgorgement in SEC enforcement proceedings." *Id.* at 461 n.3.

Three years later, the Court in *Liu* held that courts did possess that authority, subject to certain conditions. At that time, no statutory provision specifically author-

ized courts to award "disgorgement" in SEC enforcement suits. The *Liu* Court's analysis accordingly focused on Section 21(d)(5) of the Exchange Act, 15 U.S.C. 78u(d)(5), a provision that had been added to the Act in 2002. See Sarbanes-Oxley Act, Pub. L. No. 107-204, § 305(b), 116 Stat. 779. Section 78u(d)(5) provides that "[i]n any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors." 15 U.S.C. 78u(d)(5).

The *Liu* Court explained that, "[i]n interpreting statutes like § 78u(d)(5) that provide for 'equitable relief,' this Court analyzes whether a particular remedy falls into 'those categories of relief that were *typically* available in equity.'" 591 U.S. at 78-79 (citation omitted). The Court held that such relief can include disgorgement, despite "the relatively recent vintage of the term," because a remedy stripping "a wrongdoer's net unlawful profits, whatever the name, has been a mainstay of equity courts." *Id.* at 76 n.1, 80. The Court further held, however, that the statutory text and traditional equitable principles imposed certain limits on disgorgement under Section 78u(d)(5). The Court held in particular that disgorgement must when feasible be "awarded for victims," *id.* at 79; that such relief must be limited "to net profits from wrongdoing after deducting legitimate expenses," *id.* at 84; and that rules of joint-and-several liability may not be used "to impose disgorgement liability on a wrongdoer for benefits that accrue to his affiliates," *id.* at 90.

2. Bills to expressly authorize the SEC to obtain disgorgement in civil actions had been introduced in Congress—and one had been passed by the House of Rep-

resentatives—after this Court decided *Kokesh* (and reserved the question whether disgorgement was available at all in such cases) and before *Liu*. See Investor Protection and Capital Markets Fairness Act, H.R. 4344, 116th Cong. (as passed by the House, Nov. 18, 2019); Securities Fraud Enforcement and Investor Compensation Act of 2019, S. 799, 116th Cong. (as introduced in the Senate, Mar. 14, 2019).

About six months after *Liu* was decided, Congress amended Section 21(d) of the Exchange Act, enacting provisions similar to those in the previous Senate bill. See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 6501, 134 Stat. 4625 (2021); cf. S. 799, § 2. Section 21(d)(3)(A)(ii) now grants courts in SEC civil enforcement actions jurisdiction to "require disgorgement under paragraph (7) of any unjust enrichment by the person who received such unjust enrichment as a result of [the] violation." 15 U.S.C. 78u(d)(3)(A)(ii). Paragraph (7) in turn states that, "[i]n any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement." 15 U.S.C. 78u(d)(7).

Paragraph (8) of 15 U.S.C. 78u(d) defines the limitations periods for SEC suits seeking disgorgement and other remedies. 15 U.S.C. 78u(d)(8). And paragraph (9) provides that "[n]othing in paragraph (7) may be construed as altering any right that any private party may have to maintain a suit for a violation" of the Exchange Act. 15 U.S.C. 78u(d)(9). The amended statute also retains paragraph (5)'s authorization for the SEC to seek "any equitable relief that may be appropriate or necessary for the benefit of investors," 15 U.S.C. 78u(d)(5), as well as paragraph (3)'s pre-existing authorization to

seek civil monetary penalties, 15 U.S.C. 78u(d)(3)(A)(i) and (B).

B. The Present Controversy

1. Petitioner engaged in fraudulent schemes involving at least 20 penny-stock companies. Pet. App. 23a. "Penny stocks are low-priced, high-risk equity securities for which there is frequently no well-developed market." *SEC* v. *Gentile*, 939 F.3d 549, 552 n.2 (3d Cir. 2019) (citation omitted), cert. denied, 590 U.S. 904 (2020); see 15 U.S.C. 78c(a)(51). For example, in one set of schemes, petitioner and his associates obtained shares of penny-stock companies; promoted the companies through intermediaries or through petitioner's website; waited for the share price to rise because of the promotions; and then promptly sold the shares. Pet. App. 23a-24a. Petitioner and his associates neither identified themselves as the promotions' funders nor disclosed that they intended to sell stock in the issuers being promoted. *Ibid.* Petitioner also engaged in manipulative "match" trading—coordinated trading among nominally distinct accounts designed to create the appearance of market interest. *Id.* at 25a-26a. Through those and other schemes, petitioner and his associates obtained illicit proceeds of more than $6.6 million. *Id.* at 24a.

In a parallel criminal case, petitioner pleaded guilty to one count of offering and selling securities in unregistered transactions, in violation of 15 U.S.C. 77e(a)(1) and 77x, and was sentenced to 21 months of imprisonment. 20-cr-160 Judgment 1-2 (S.D. Cal. Aug. 1, 2022). In the course of that prosecution, petitioner acknowledged that his conduct "had actual impact on the lives of real people—people who invested their money in empty companies so that [petitioner] and his partners could buy nice cars and houses"—and that "many of the

investors" had suffered "financial troubles" because of the fraud. 20-cr-160 D. Ct. Doc. 125, at 3, 6 (S.D. Cal. July 26, 2022).

2. In 2020, the SEC commenced a civil action in the United States District Court for the Southern District of California, alleging that petitioner had violated various provisions of the securities laws. Pet. App. 19a-20a. Petitioner consented to the entry of judgment against him, agreeing that the district court "'shall order disgorgement of ill-gotten gains and prejudgment interest thereon' and that, 'solely for the purposes of the SEC's motion for disgorgement, the allegations of the Complaint shall be accepted as and deemed true by the Court.'" *Id.* at 8a (brackets omitted).

As relevant here, the district court rejected petitioner's contention that the SEC's purported failure to identify particular harmed investors precluded a disgorgement award. Pet. App. 28a-31a. Without deciding whether such evidence is required, the district court found that, "in light of the allegations in [the] SEC's first amended complaint, which the Court must accept as true pursuant to the parties' consent judgment, [the] SEC has demonstrated that investors have been harmed by [petitioner's] fraudulent schemes." *Id.* at 30a.

The district court ordered petitioner to disgorge $3,303,276.93 ($2,251,923.16 in ill-gotten gains, plus $1,051,353.77 in prejudgment interest). Pet. App. 41a. Noting the SEC's representation that the Commission "will make good faith efforts to ensure that any disgorgement award will go to * * * harmed investors," *id.* at 31a, the court "retain[ed] jurisdiction of this matter for the purposes of enforcing the terms of th[e] Final Judgment," *id.* at 46a.

3. The Ninth Circuit affirmed, holding that a finding of pecuniary harm to investors is not a prerequisite to a

disgorgement award under Section 78u(d). Pet. App. 1a-18a.

The court of appeals observed that in *Liu*, *supra*, this Court had interpreted Section 78u(d)(5)'s authorization of "equitable relief" to encompass awards of disgorgement. Pet. App. 5a (citation omitted). The court further explained that Congress had subsequently "created a second statutory basis for awarding disgorgement" by enacting Section 78u(d)(7), which specifically authorizes the Commission to seek disgorgement in a civil action to enforce the securities laws. *Id.* at 6a.

The court of appeals determined that neither Subsection (d)(5) nor Subsection (d)(7) makes a finding of pecuniary harm to investors a prerequisite for the SEC to obtain disgorgement. Pet. App. 10a-17a. The court explained that, under "common-law" principles and "traditional equity practice," *id.* at 11a (quoting *Liu*, 591 U.S. at 85, 87), "a claimant seeking disgorgement need only show 'an actionable interference by the defendant with the claimant's legally protected interests,'" and "the claimant need not show any loss whatsoever, let alone a pecuniary loss," *id.* at 11a-12a (citation omitted); see *id.* at 12a n.6 (noting that petitioner "d[id] not argue that his victims did not suffer a violation of their legally protected interests"). The court stated that the contrary view "ignores the fundamental distinction between compensatory damages, which are designed to compensate the victim for her losses, and [disgorgement], which is designed to deprive the wrongdoer of his ill-gotten gains." *Id.* at 14a. The court likewise rejected the contentions that a pecuniary-harm requirement for disgorgement followed from *Liu* or from the economic-loss element of a private securities-fraud action. *Id.* at 13a-17a. Having held that pecuniary harm to investors is not a prerequisite for SEC dis-

gorgement, the court declined to address the SEC's alternative argument that such harm had occurred in this case. *Id.* at 10a.

SUMMARY OF ARGUMENT

A showing that investors suffered pecuniary harm is not a prerequisite for a court to order disgorgement in SEC civil enforcement actions.

A. A pecuniary-harm requirement is inconsistent with the plain and legal meanings of "disgorgement" and the basic purpose of that remedy. Disgorgement is a "'profit-based measure of unjust enrichment'" that "deprive[s] wrongdoers of their net profits from unlawful activity." *Liu* v. *SEC*, 591 U.S. 71, 79 (2020) (citation omitted). It reflects the fundamental principle that it would be quintessentially inequitable to permit a known wrongdoer to profit from his own misdeeds. Disgorgement's essential function is thus to strip wrongdoers of ill-gotten gains, not to compensate victims for monetary losses. Because a wrongdoer can generate profits from unlawful and market-distorting activity without inflicting monetary harm on victims, making disgorgement contingent on a showing of such harm would be inconsistent with disgorgement's nature and purpose.

Courts and commentators have recognized that proof of pecuniary harm is not a prerequisite for disgorgement or similar profit-based remedies. Nothing in Section 21(d) of the Exchange Act suggests that a different rule applies in SEC civil enforcement actions. To the contrary, the disgorgement provisions' reference to "unjust enrichment," 15 U.S.C. 78u(d)(3)(A)(ii), confirms the absence of any pecuniary-harm prerequisite, for it is well established that unjust enrichment is "not contingent" on the occurrence of harm beyond the invasion of

the victim's "legal right." *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 344 (2016) (Thomas, J., concurring).

B. Section 78u(d)'s context and historical background support the same conclusion. Other Exchange Act provisions, including in Section 78u itself, explicitly condition remedies in securities cases on showings of economic loss. The absence of any explicit pecuniary-harm requirement for SEC disgorgement claims supports the inference that such a showing is unnecessary. And by the time Congress specifically authorized "disgorgement" in SEC enforcement suits by enacting new Section 78u(d)(3)(A)(ii) and (7), several courts of appeals had concluded that the Commission could obtain disgorgement without showing pecuniary harm to victims. Lower courts also broadly agreed that SEC disgorgement's core purpose is not compensatory. Against that backdrop, Congress's omission of any explicit pecuniary-harm requirement takes on particular significance.

C. Petitioner's reliance on *Liu* is misplaced. The Court in *Liu* held that, if distribution of funds to "victims" of the defendant's violation is feasible, money disgorged under Section 78u(d)(5) should be used for that purpose. Contrary to petitioner's contention, that holding does not imply that Section 78u(d)(5) makes pecuniary harm to investors a prerequisite to disgorgement. *Liu* does not hold that disgorgement is barred when victims cannot be identified or their losses quantified. Moreover, a person may be a "victim" without suffering pecuniary injury, and monetary awards are routinely used to compensate for non-pecuniary harms.

The more fundamental problem with petitioner's argument, however, is that it disregards Congress's *response* to *Liu*. Approximately six months after this Court issued that decision, Congress amended Section 78u(d) to add Subsections (d)(3)(A)(ii) and (d)(7). Unlike Sub-

section (d)(5), those provisions refer specifically to "unjust enrichment" and "disgorgement," and they do not contain the terms ("equitable relief" and "for the benefit of investors") that underlay the *Liu* Court's determination that disgorged funds should if feasible be used to compensate victims.

With respect to two *other* limitations on disgorgement relief, new Subsection (d)(3)(A)(ii) incorporates substantially the same restrictions the *Liu* Court had found to be implicit in Subsection (d)(5). Thus, Subsection (d)(3)(A)(ii) makes clear that disgorgement should be calculated by reference to the defendant's net profits rather than his gross receipts, and that only funds a person received as a result of the violation may be disgorged. By contrast, nothing in the text of new Subsection (d)(3)(A)(ii) or (d)(7) suggests that a disgorgement award must be used to compensate victims, or that a showing of pecuniary harm to investors is a prerequisite to such an award. Petitioner's hypothesis that Congress enacted the new disgorgement provisions merely to codify *Liu* is implausible. There is likewise no basis for petitioner's suggestion that Congress enacted new Subsections (d)(3)(A)(ii) and (d)(7) purely to effectuate the new limitations provisions enacted in new Subsection (d)(8).

ARGUMENT

PECUNIARY HARM TO INVESTORS IS NOT A PREREQUISITE FOR DISGORGEMENT IN SEC CIVIL ENFORCEMENT ACTIONS

The court of appeals correctly rejected petitioner's contention that the Securities and Exchange Commission may obtain disgorgement in civil enforcement proceedings only if it shows that the defendant's misconduct inflicted pecuniary harm on victims. Consistent

with the ordinary legal and lay understanding of the term, "disgorgement" in SEC enforcement suits historically has been awarded as a profits-based remedy whose purpose is to strip wrongdoers of their illicit gains rather than to compensate victims. A pecuniary-harm requirement therefore would conflict with the essential nature and purpose of the remedy.

After this Court issued its decision in *Liu* v. *SEC*, 591 U.S. 71 (2020), Congress amended the Exchange Act to add provisions that specifically authorize "disgorgement" in SEC civil enforcement suits. See 15 U.S.C. 78u(d)(3)(A)(ii) and (7). Although the new Subsections (d)(3)(A)(ii) and (d)(7) place significant limitations on the disgorgement remedy, including limitations previously articulated in *Liu*, those provisions contain no language that could reasonably be construed to require proof of pecuniary harm.

A. The Exchange Act's Disgorgement Provisions Do Not Impose A Monetary-Loss Requirement

Under Section 21(d) of the Exchange Act, the SEC may seek and a district court may order "disgorgement * * * of any unjust enrichment by the person who received such unjust enrichment as a result of [a] violation" of the Act. 15 U.S.C. 78u(d)(3)(A)(ii); see 15 U.S.C. 78u(d)(7) ("In any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement."). That remedy is not conditioned on a showing of pecuniary harm to investors.

1. Courts order disgorgement to strip wrongdoers of their ill-gotten gains rather than to compensate victims for their losses

a. Disgorgement serves the "foundational" equitable principle that no wrongdoer "'should make a profit out of his own wrong.'" *Liu*, 591 U.S. at 79-80 (quoting *Root* v. *Railway Co.*, 105 U.S. 189, 207 (1882)). The term "disgorgement" means "[t]he act of giving up something (such as profits illegally obtained) on demand or by legal compulsion." *Black's Law Dictionary* 588 (11th ed. 2019); see *Liu*, 591 U.S. at 75 (describing the remedy as depriving the "defendant of 'the gains of wrongful conduct'") (citation and ellipsis omitted); *Kokesh* v. *SEC*, 581 U.S. 455, 458-459 (2017) ("a form of 'restitution measured by the defendant's wrongful gain'") (brackets and citation omitted).

Consistent with its nonlegal meanings, "disgorgement" simply refers to an act of cession or giving something up. Cf. *Disgorgement*, *New Oxford American Dictionary* 498 (3d ed. 2010) (*e.g.*, "cause to pour out"; "eject (food) from the throat or mouth"). The word says nothing about the use (if any) to which the disgorged matter will be put. While it would be strange to say that a wrongdoer was ordered to pay "damages" when no one was harmed by his misconduct, it would be natural to say that he was ordered to "disgorge" profits derived from his misconduct even if he had made those profits at no victim's monetary expense.

Suppose, for example, that an investment adviser received undisclosed payments to direct trades to a particular broker, who executed the trades at competitive rates such that investors suffered no pecuniary harm. Cf. *SEC* v. *Zwick*, 317 Fed. Appx. 34 (2d Cir. 2008) (affirming liability for a kickback scheme). If a court or-

dered the adviser to give up the kickback proceeds, that remedy would aptly be characterized as "disgorgement." So too if an issuer made false statements to inflate the price of a security and profited from the fraudulent sales, but the fraud did not ultimately cause any monetary loss to the victims. See *Dura Pharm., Inc.* v. *Broudo*, 544 U.S. 336, 342-343 (2005).

Because the essential function of disgorgement is to strip wrongdoers of their wrongful gains, not to compensate victims for any monetary losses, this Court has distinguished "disgorgement of ill-gotten profits" from "[t]he remedy of damages," which "seeks to compensate the victim for its loss." *SCA Hygiene Prods. Aktiebolag* v. *First Quality Baby Prods., LLC*, 580 U.S. 328, 341 (2017); see *Kansas* v. *Nebraska*, 574 U.S. 445, 482 (2015) (Thomas, J., concurring in part and dissenting in part) (noting that disgorgement "goes beyond a plaintiff's damages"). To be sure, a wrongdoer's disgorgement of ill-gotten gains can be part of a larger process that achieves an ultimate compensatory purpose, *i.e.*, through payment of the disgorged funds to victims who sustained pecuniary harm from the violation. But compensation is not the essence of the remedy, and the use to which the acquired funds are put has no bearing on whether "disgorgement" has occurred. See *Kokesh*, 581 U.S. at 464 (noting that "in many cases, SEC disgorgement is not compensatory"); cf. 6 Louis Loss, *Securities Regulation* 3574 (2d ed. Supp. 1969) ("[I]t is more important to take the profit away from the [wrongdoer] than to worry about who gets it.").*

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* Petitioner states that "[d]isgorgement's core purpose is instead 'compensatory,'" Br. 15 (quoting *Kokesh*, 581 U.S. at 464), but he omits the word "not" from the quoted sentence.

Indeed, petitioner recognizes the "uncontroverted principle" that "disgorgement is measured by the defendant's wrongful profits rather than the victim's loss." Br. 36 (emphasis omitted); see *SEC* v. *Govil*, 86 F.4th 89, 105 (2d Cir. 2023) (same). He nevertheless insists that the availability of SEC disgorgement is contingent upon a showing of monetary loss to victims, even though the amount of such loss bears no necessary relation to the amount of the defendant's ill-gotten gains. In this case, for example, petitioner would apparently accept that he could be ordered to disgorge his wrongful gains (which exceed $3 million with interest, Pet. App. 41a) upon a showing that his misconduct caused one dollar of pecuniary harm to one victim—but that, absent such a showing, he is free to keep the entire sum. Such a counterintuitive rule would impede Congress's effort to divest wrongdoers of their illicit gains while creating arbitrary distinctions among violators.

b. The Restatement (Third) of Restitution and Unjust Enrichment recognizes that disgorgement and similar remedies are not contingent on a showing of pecuniary harm. "So long as benefits wrongfully obtained have an ascertainable market value, that value is the minimum measure of the wrongdoing defendant's unjust enrichment, even if the transaction produces no ascertainable injury to the claimant." Restatement (Third) of Restitution and Unjust Enrichment § 51, cmt. d (2011) (Third Restatement); accord *id.* § 3, reporter's note a ("[I]t is clear * * * that there can be restitution of wrongful gain in cases where the plaintiff has suffered an interference with protected interests but no measurable loss whatsoever."). Although petitioner criticizes the Third Restatement (Br. 15, 28-29, 32-36), this Court has relied on it repeatedly—including in the decisions on which petitioner principally relies here. See

Liu, 591 U.S. at 79, 91; *Kokesh*, 581 U.S. at 458-459, 466; see also, *e.g.*, *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 668 n.1 (2014).

In any event, the Third Restatement is not an outlier. The First Restatement similarly observes that situations may arise in which "a benefit has been received by the defendant but the plaintiff has not suffered a corresponding loss or, in some cases, *any loss*, but nevertheless the enrichment of the defendant would be unjust" and "the defendant may be under a duty to give to the plaintiff the amount by which he has been enriched." Restatement (First) of Restitution § 1, cmt. e (1937) (emphasis added); see Restatement (Second) of Restitution § 1, cmt. g (Tentative Draft No. 1, 1983) (describing "a loss suffered by the claimant" and "the infringement of an interest of his" as "alternative constituents of a right to restitution"); 1 George E. Palmer, *Law of Restitution* § 1.1(a), at 8 n.17 (3d ed. 2020) ("[T]here are significant instances of liability based on unjust enrichment that do not involve the restoration of anything the claimant previously possessed, such as cases involving the disgorgement of profits, or other benefits wrongfully obtained, in excess of the plaintiff's loss."). The section of the First Restatement invoked by petitioner (Br. 34-35) is limited to restitution in tort pertaining to chattels, and in any event does not impose an inflexible loss requirement. Restatement (First) of Restitution § 128, cmt. f; see *id.* reporter's note f ("The plaintiff can recover for benefit received by the defendant irrespective of loss to the plaintiff.") (citing *Corey* v. *Struve*, 149 P. 48 (Cal. 1915), and *Catts* v. *Phalen*, 43 U.S. (2 How.) 376 (1844)).

Two features of current Section 78u(d) reinforce that conclusion. First, Subsections (d)(3)(A)(ii) and (d)(7) use the specific term ("disgorgement") that most clearly

refers to the defendant's surrender of profits standing alone, rather than to any larger compensatory process. That term indicates with particular clarity that prevention of unjust gain is to be treated as an end in itself. See pp. 14-16, *supra*.

Second, Section 78u(d) applies only in enforcement actions brought by the SEC, not in private suits. Petitioner suggests (Br. 12-13, 18-19, 26, 31) that ordering disgorgement absent proof of pecuniary harm would result in an impermissible "windfall" for victims. Even in private litigation, courts have often concluded that it is "more appropriate to give the defrauded party the benefit even of windfalls than to let the fraudulent party keep them." *Randall* v. *Loftsgaarden*, 478 U.S. 647, 663 (1986) (citation omitted); see, *e.g.*, *Taylor* v. *Meirick*, 712 F.2d 1112, 1120 (7th Cir. 1983) (Posner, J.). But petitioner's concern is especially misplaced in the context of a suit brought by the government, where "[t]he violation for which the remedy is sought is committed against the United States rather than an aggrieved individual" and the government sues to protect the public interest. *Kokesh*, 581 U.S. at 463. The Commission's ability to obtain disgorgement orders, thereby ensuring that violators do not profit from their own wrongs, should not depend on the presence or absence of demonstrated pecuniary harm to victims.

2. "Unjust enrichment" resulting from a defendant's wrongdoing does not require monetary harm to victims

As amended after *Liu*, Section 78u(d) now authorizes courts in SEC enforcement suits to "require disgorgement under paragraph (7) of any *unjust enrichment* by the person who received such *unjust enrichment* as a result of [the] violation." 15 U.S.C. 78u(d)(3)(A)(ii) (em-

phases added). "Unjust enrichment" is a "traditional remed[y]" that is "not contingent on a plaintiff's allegation of damages beyond the violation of his private legal right." *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 344 (2016) (Thomas, J., concurring). Unjust enrichment is not necessarily compensatory and does not require any pecuniary loss by a victim. In *CIGNA Corp.* v. *Amara*, 563 U.S. 421 (2011), for example, this Court explained that "[e]quity courts possessed the power to provide relief in the form of monetary 'compensation' for a loss resulting from a trustee's breach of duty, *or* to prevent the trustee's unjust enrichment." *Id.* at 441 (emphasis added; citation omitted); see 1 Dan B. Dobbs, *Law of Remedies* § 4.5(1), at 628 (2d ed. 1993) ("Restitution is measured by the defendant's unjust enrichment, not by the plaintiff's loss."). "The point is not whether a definite something was taken away from plaintiff and added to the treasury of defendant"; it is "whether defendant unjustly enriched itself by doing a wrong to plaintiff in such manner and in such circumstances that in equity and good conscience defendant should not be permitted to retain that by which it has been enriched." *Federal Sugar Ref. Co.* v. *United States Sugar Equalization Bd.*, 268 F. 575, 582 (S.D.N.Y. 1920).

In one classic unjust-enrichment case, an egg-packing company had taken the plaintiff's egg-washing machine out of storage without his consent and had used it for three years. *Olwell* v. *Nye & Nissen Co.*, 173 P.2d 652, 652-653 (Wash. 1946). The Supreme Court of Washington held that, although the plaintiff was required to show a "loss" to recover the company's profits from using the machine on a theory of unjust enrichment, the interference with the plaintiff's property rights was sufficient, and no monetary loss was necessary. *Id.* at 654; see *id.* at 653; see also, *e.g.*, *Raven Red Ash Coal*

Co. v. *Ball*, 39 S.E.2d 231, 239 (Va. 1946) (upholding the award of a trespasser's profits despite the absence of "damage to the realty").

Even in *private* suits alleging unjust enrichment, the plaintiff need not prove economic harm to himself, provided he shows that his *own* legal rights were violated. See *Spokeo*, 578 U.S. at 344 (Thomas, J., concurring) (referring to cases in which "a private plaintiff seeks to enforce only his personal rights against another private party"). Section 78u(d) applies solely to suits brought by a federal agency to enforce laws that protect the general public. And Subsection (d)(3)(A)(ii) specifies that the Commission may recover "any unjust enrichment" that was "received" by the defendant "as a result of [a] violation" of specified federal securities laws. 15 U.S.C. 78u(d)(3)(A)(ii). Although that provision requires a causal nexus to the defendant's securities-law violation, nothing in Subsections (d)(3)(A)(ii) or (d)(7) requires any particular nexus between the defendant's enrichment and any specific harm to victims of the defendant's violation.

"When Congress uses a term with origins in the common law," this Court "generally presume[s] that the term 'brings the old soil with it.'" *Kousisis* v. *United States*, 605 U.S. 114, 124 (2025) (quoting *Sekhar* v. *United States*, 570 U.S. 729, 733 (2013)). The term "unjust enrichment" in Section 78u(d)(3)(A)(ii) therefore incorporates the traditional rule that a defendant's "enrichment" may be "unjust" if it results from the defendant's violation of legal rights or duties, whether or not the violation causes pecuniary harm to others. And under "the canon of *noscitur a sociis*," "a word is 'given more precise content by the neighboring words with which it is associated.'" *Fischer* v. *United States*, 603 U.S. 480, 487 (2024) (citation omitted). Congress's ref-

erence to the amount of the "unjust enrichment" resulting from the violation (rather than the amount of injury to victims) as the measure of appropriate "disgorgement" further indicates that the term "disgorgement" in Section 78u(d)(3) and (7) does not contain an implicit pecuniary-harm requirement. Just as the Court recently found no basis for reading an economic-loss element into the federal wire-fraud statute, *Kousisis*, 605 U.S. at 135, there is no basis for engrafting a similar requirement onto the Exchange Act's disgorgement provisions.

B. Statutory Context And History Confirm The Scope Of The SEC's Disgorgement Remedy

The statutory context and historical background of the Exchange Act's disgorgement provisions reinforce the conclusion that those provisions do not contain an implicit pecuniary-harm requirement.

1. Congress has spoken clearly when it has required economic loss in securities suits

"It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted). "Moreover, 'when Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Collins* v. *Yellen*, 594 U.S. 220, 248 (2021) (citation omitted). Congress's explicit adoption of economic-loss requirements in other parts of the Exchange Act bolsters the conclusion that Congress did not silently include such a requirement in Section 78u(d)'s disgorgement provisions.

Section 78u itself twice refers to losses by victims. Under the statute's civil-penalty provisions, a "[t]hird tier" penalty—up to "$100,000 for a natural person or $500,000 for any other person," or "the gross amount of pecuniary gain to [the] defendant as a result of the violation"—is available only if "such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." 15 U.S.C. 78u(d)(3)(B)(iii). And Section 78u(h) entitles the SEC to obtain certain financial records when it "has reason to believe," among other things, that "the acts, practices or course of conduct under investigation involve" "a financial loss to investors or other persons protected under the securities laws which remains substantially uncompensated." 15 U.S.C. 78u(h)(2). If Congress had intended to make a showing of pecuniary harm to victims a prerequisite to disgorgement, "it obviously knew how to say so." *Commissioner* v. *Zuch*, 605 U.S. 422, 435 (2025).

The Private Securities Litigation Reform Act of 1995 (PSLRA), Pub. L. No. 104-67, 109 Stat. 737, provides another example. As first enacted, the Exchange Act authorized the SEC to sue but did not give private parties an express cause of action to enforce the Act's antifraud provisions. But this Court recognized an "implied * * * private damages action" under the Act. *Dura Pharm.*, 544 U.S. at 341; see *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723 (1975). Congress later enacted the PSLRA "[a]s a check against abusive litigation by private parties" brought under the judicially implied private right of action. *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Among the limitations on private securities suits imposed by the PSLRA are express economic-loss and loss-causation requirements. See 15 U.S.C. 78u-4(b)(4) ("In any

private action arising under this chapter, the plaintiff shall have the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages.").

By its express terms ("[i]n any private action"), that provision does not apply to civil actions brought by the Commission. See, *e.g.*, *SEC* v. *Pirate Inv. LLC*, 580 F.3d 233, 239 n.10 (4th Cir. 2009) (per curiam), cert. denied, 561 U.S. 1026 (2010). That "asymmetry between private securities actions and SEC civil enforcement actions is by design." Pet. App. 17a; contra Pet. Br. 25-26; *Govil*, 86 F.4th at 104-105. SEC enforcement actions do not raise the concerns about abusive private securities suits that prompted the enactment of the PSLRA. And when the SEC brings such an action, including for disgorgement, "it acts in the public interest, to remedy harm to the public at large, rather than standing in the shoes of particular injured parties." *Kokesh*, 581 U.S. at 463 (citation omitted); see p. 18, *supra*. The 2021 amendments to Section 78u(d) reinforced the separation between SEC enforcement actions and private Exchange Act suits. See 15 U.S.C. 78u(d)(9) ("Nothing in paragraph (7) may be construed as altering any right that any private party may have to maintain a suit for a violation of this chapter."); see also 15 U.S.C. 78u(g) (providing that absent the SEC's consent, "no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission").

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), provides a further indication that disgorgement in SEC enforcement suits does not depend on monetary losses

by investors. The Dodd-Frank Act amended the Exchange Act to require that any disgorgement that is recovered by the SEC but is not "distributed to victims" must be deposited in the Commission's Investor Protection Fund. § 922(a), 124 Stat. 1844; see *id.* at 1841-1848; see also 15 U.S.C. 78u-6(g)(3)(A)(i). Congress's evident recognition that the Commission may use disgorged funds for purposes other than distribution to victims reinforces the conclusion that disgorgement of unjust enrichment is independent of any showing of investor loss.

2. Courts have not viewed pecuniary harm to investors as a prerequisite for SEC disgorgement

This Court "normally assume[s] that, when Congress enacts statutes, it is aware of relevant judicial precedent." *Merck & Co.* v. *Reynolds*, 559 U.S. 633, 648 (2010). When Congress enacted Section 78u(d)'s disgorgement provisions in 2021, see p. 6, *supra*, federal courts had for decades asserted authority to order disgorgement in SEC enforcement actions. See *Liu*, 591 U.S. at 75-76. Those courts' decisions did not describe any requirement of pecuniary harm to victims, and several affirmatively rejected one.

As the D.C. Circuit explained in *SEC* v. *Bilzerian*, 29 F.3d 689 (1994), "[w]hether or not [the defendant's] securities violations injured others is irrelevant to the question whether disgorgement is appropriate," because "[t]he primary purpose of disgorgement is not to refund others for losses suffered but rather 'to deprive the wrongdoer of his ill-gotten gain.'" *Id.* at 697 (quoting *SEC* v. *Blatt*, 583 F.2d 1325, 1335 (5th Cir. 1978)). The court in *SEC* v. *Rind*, 991 F.2d 1486 (9th Cir.), cert. denied, 510 U.S. 963 (1993), similarly observed that "[t]he Commission seeks disgorgement in order to deprive the wrongdoer of his or her unlawful profits and thereby

eliminate the incentive for violating the securities laws. The theory behind the remedy is deterrence and not compensation." *Id.* at 1490. For that reason, the court explained, "a district court may grant the Commission's request for disgorgement even where no injured investors can be identified." *Ibid.*; accord *SEC* v. *Blavin*, 760 F.2d 706, 713 (6th Cir. 1985) (per curiam) ("Once the Commission has established that a defendant has violated the securities laws, the district court possesses the equitable power to grant disgorgement without inquiring whether, or to what extent, identifiable private parties have been damaged by [the defendant's] fraud.").

The Second Circuit applied substantially the same analysis in holding that a disgorgement order could include profits the defendant had gained "from another party to the scheme rather than from the public." *SEC* v. *Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 102 (1978) (Friendly, J.). The court explained that "the primary purpose of disgorgement is not to compensate investors" but to "forc[e] a defendant to give up the amount by which he was unjustly enriched." *Ibid.* Other courts of appeals have agreed. See, *e.g.*, *SEC* v. *Teo*, 746 F.3d 90, 104-105 (3d Cir.) ("[T]he SEC's use of the disgorgement remedy has been constructed around two objectives: to deprive a wrongdoer of his unjust enrichment and to deter others from violating securities laws.") (citation and internal quotation marks omitted), cert. denied, 574 U.S. 1011 (2014); *SEC* v. *Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1097 (9th Cir. 2010) ("[T]he purpose of a disgorgement remedy is to prevent unjust enrichment and to make securities law violations unprofitable, not to compensate victims."); *SEC* v. *First City Fin. Corp.*, 890 F.2d 1215, 1232 n.24 (D.C. Cir. 1989) (Silberman, J.) (distinguishing disgorgement of profits "in the context of an SEC enforcement suit,

where deterrence is the key objective," from private suits, where "compensation for wrongdoing becomes a more important, perhaps the dominant, rationale").

Thus, in the specific context of SEC suits to enforce the securities laws, lower courts have repeatedly linked the concept of "disgorgement" to two related propositions. First, to ensure that securities-law violators do not profit from their own wrongs, divestiture of a violator's profits has been viewed as desirable in and of itself, independent of any productive uses (including compensation of any identifiable victims) to which the disgorged funds may be put once they come into the SEC's possession. Second, because disgorgement's purpose is to prevent unjust enrichment rather than to compensate victims, the appropriate measure of disgorgement is the defendant's profits rather than any losses the victims may have suffered.

Congress acted against the backdrop of that body of case law when it granted courts express authority to order disgorgement in Section 78u(d)(3)(A)(ii) and (7). Cf. *Merck*, 559 U.S. at 648. Yet Congress included no language imposing a monetary-loss requirement, even though it has done so for other purposes in other provisions of the Act. That is further reason to conclude that no such requirement exists.

C. Petitioner's Reliance On *Liu* Is Misplaced

Petitioner's contrary argument centers on this Court's decision in *Liu*, *supra*. The *Liu* Court held that Section 78u(d)(5)'s grant of authority for courts to order "any equitable relief that may be appropriate or necessary for the benefit of investors," 15 U.S.C. 78u(d)(5), includes profits-based remedies of the general sort that lower courts had awarded in SEC enforcement suits, subject to certain conditions that lower courts had "oc-

casionally" exceeded. 591 U.S. at 85. The Court held in particular "that a disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under § 78u(d)(5)." *Id.* at 75. In petitioner's view (Br. 15-20), the *Liu* Court's holding and analysis imply that profits-based remedies under the securities laws are authorized only when the defendant's misconduct has caused pecuniary harm to victims.

Petitioner misreads *Liu*, which did not hold that disgorgement under Section 78u(d)(5) is conditioned on a showing of pecuniary harm to victims. In any event, to uphold the disgorgement award in this case, the Court need not decide whether (as the court of appeals concluded, see Pet. App. 2a, 17a-18a) that award was authorized by Subsection (d)(5). Approximately six months after this Court decided *Liu*, Congress amended Section 78u to add new Subsections (d)(3)(A)(ii) and (d)(7), which specifically authorize "disgorgement" of a defendant's "unjust enrichment." Nothing in *Liu* suggests that those provisions should be given anything other than their natural reading. To the extent the *Liu* Court suggested that profits-based awards under Subsection (d)(5) must serve a compensatory purpose, the Court invoked statutory language ("equitable relief" and "for the benefit of investors") that does not appear in the newly enacted provisions. And while new Subsection (d)(3)(A)(ii) imposes *other* significant limitations on disgorgement in SEC enforcement suits, neither Subsection (d)(3)(A)(ii) nor Subsection (d)(7) contains any language that could plausibly be read to require pecuniary harm to investors. The statute thus authorizes disgorgement, including as an equitable remedy, without a showing of such harm.

1. The Court in Liu *focused on specific statutory language that appears in Subsection (d)(5) but not in Subsections (d)(3)(A)(ii) or (d)(7)*

a. In construing Section 78u(d)(5)'s authorization of "any equitable relief that may be appropriate or necessary for the benefit of investors," 15 U.S.C. 78u(d)(5), the Court in *Liu* applied interpretive rules used to construe general grants of equitable power. The Court explained that, "[i]n interpreting statutes like § 78u(d)(5) that provide for 'equitable relief,' this Court analyzes whether a particular remedy falls into 'those categories of relief that were *typically* available in equity.'" 591 U.S. at 78-79 (quoting *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 256 (1993)); see *id.* at 85 (construing Section 78u(d)(5) to incorporate "longstanding equitable principles"); *id.* at 89 ("traditional equitable principles"). The Court thus construed Section 78u(d)(5) not only as requiring that particular remedies fall on the equity side of the law/equity line, but also as authorizing only those equitable remedies that have a long-established historical pedigree, and as incorporating traditional limitations on particular forms of equitable relief.

At various points the *Liu* opinion suggested that, at least in many circumstances, a profits-based remedy will be authorized by Section 78u(d)(5) only if the profits award is used to compensate the "known victims" of the defendant's unlawful conduct. 591 U.S. at 88; see *id.* at 85 (criticizing the practice of depositing disgorged funds with the Treasury "instead of disbursing them to victims"). The Court stated, for example, that "[t]he equitable nature of the profits remedy generally requires the SEC to return a defendant's gains to wronged investors for their benefit." *Id.* at 88. The Court also stated that, as a general matter, "the SEC's equitable,

profits-based remedy must do more than simply benefit the public at large by virtue of depriving a wrongdoer of ill-gotten gains. To hold otherwise would render meaningless *the latter part of § 78u(d)(5)*," *id.* at 89 (emphasis added), *i.e.*, Section 78u(d)(5)'s reference to relief "appropriate or necessary for the benefit of investors," 15 U.S.C. 78u(d)(5). The Court reserved the question whether "depositing disgorgement funds with the Treasury may be justified where it is infeasible to distribute the collected funds to investors." *Liu*, 591 U.S. at 89. But the thrust of its opinion was that, if distribution of disgorged funds to wronged investors is feasible, any disgorgement award under Section 78u(d)(5) must be used for that purpose.

Even with respect to Subsection (d)(5), the *Liu* opinion did not state at any point that a showing of pecuniary harm to victims is a prerequisite to a profits-based equitable remedy. Petitioner appears (*e.g.*, Br. 16, 18) to infer such a requirement from the Court's statements (*e.g.*, 591 U.S. at 75, 79) that profits recouped from a defendant under Subsection (d)(5) should ordinarily be used to compensate "victims." Petitioner appears to assume that "victims" of a securities-law violation will exist only if the violation caused pecuniary injury to investors. See Br. 26, 36 (citing *Govil*, 86 F.4th at 104-105). Petitioner's chain of inferences is unsound even on its own terms, since a person can be a "victim" of unlawful conduct without suffering pecuniary harm, and monetary awards are routinely used to compensate for non-pecuniary injuries. See, *e.g.*, *Kousisis*, 605 U.S. at 118; *Spokeo*, 578 U.S. at 344 (Thomas, J., concurring); see also *Stillwell* v. *Rankin*, 174 P. 186, 187 (Mont. 1918) ("'injury' and 'pecuniary loss' are not synonymous terms").

Nor did the *Liu* Court imply a pecuniary-harm requirement under Subsection (d)(5) by linking disgorgement under that provision with other equitable profits-based remedies. See 591 U.S. at 79-82; contra Pet. Br. 29-32. Petitioner's own authorities contradict his contention that such remedies depended on monetary loss to victims. See 66 Am. Jur. 2d *Restitution and Implied Contracts* § 1 (2021) ("The principle of restitution is to deprive the defendant of benefits that in equity and good conscience the defendant ought not to keep even though the plaintiff may have suffered no demonstrable losses."); *Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 456 (1932) ("actual pecuniary loss" not required for accounting); see also *United States* v. *Carter*, 217 U.S. 286, 305 (1910) (noting that it is "immaterial" whether a plaintiff seeking a constructive trust is "able to show that it had suffered any actual loss by fraud or otherwise").

b. The more fundamental problem with petitioner's argument, however, is that it disregards the 2021 amendments to Section 78u(d), which were enacted approximately six months after *Liu* was decided and which added Subsections (d)(3)(A)(ii) and (d)(7). Those provisions specifically authorize district courts in SEC enforcement suits to award "disgorgement" of defendants' "unjust enrichment." They do not contain either of the terms ("equitable relief" and "for the benefit of investors") from which the *Liu* Court inferred a congressional directive that any profits-based relief under Subsection (d)(5) be used to compensate victims, at least when feasible. Thus, even if the Court had construed Subsection (d)(5) to make pecuniary harm to investors a prerequisite for profits-based monetary relief under that provision, that holding would not carry over to new Subsections (d)(3)(A)(ii) and (d)(7).

Petitioner contends (Br. 21) that "*Liu* definitively settled the meaning of 'disgorgement.'" But because the statute at issue in *Liu* (Section 78u(d)(5)) did not contain the word "disgorgement," the Court had no occasion to construe or define that term. Rather, the question in *Liu* was whether, and under what circumstances, a judicial order requiring a securities-law violator to turn over funds acquired through his violation was consistent with (a) traditional rules of equity and (b) Section 78u(d)(5)'s "requirement" that relief under that provision be "'for the benefit of investors,'" a phrase that the *Liu* Court construed as a statutory "limitation[] or "restrict[ion]" on the grant of authority in Subsection (d)(5). 591 U.S. at 87, 89. Although lower courts had long used the term "disgorgement" to describe profits-based awards in SEC enforcement suits (see pp. 4, 24-26, *supra*), the answer to the question presented in *Liu* did not depend in any way on whether that term aptly described what the courts were doing.

In a related vein, petitioner suggests (Br. 23) that the "for the benefit of investors" condition on equitable relief under Subsection (d)(5) "automatically inheres in the very definition of 'disgorgement' itself." But petitioner identifies no dictionary or other legal source that has defined the term "disgorgement" in that way. Rather, that term has been understood to refer to the compelled surrender of funds simpliciter, without regard to the manner in which the disgorged funds are subsequently used. See pp. 14-17, *supra*. Congress may of course enact statutory requirements that such funds be used for specified purposes. But the Commission's failure to comply with any such requirements would not mean that no "disgorgement" has occurred.

2. Petitioner is wrong in arguing that the 2021 amendments ratified* Liu *with respect to the question presented here

a. Petitioner asserts (Br. 21, 22 n.6, 28) that Congress amended Section 78u(d) in 2021 merely to "ratif[y]" *Liu*, and that the new provisions incorporate the same limitations on profits-based remedies that the *Liu* Court understood Subsection (d)(5) to impose. Petitioner also asserts (Br. 21) that in enacting new Subsection (d)(7), Congress "simply took the unadorned term ['disgorgement'], standing alone, and inserted it into the statute." Petitioner misapprehends the significance of the 2021 amendments.

"When Congress acts to amend a statute," this Court "presume[s] it intends its amendment to have real and substantial effect." *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241, 258-259 (2004) (citation omitted). And while new Subsection (d)(7) authorizes "disgorgement" without defining its limits or specifying the conditions under which it may be awarded, new Subsection (d)(3)(A)(ii) fills in those gaps. The text of Subsection (d)(3)(A)(ii) incorporates *other* restrictions articulated in *Liu*, but it contains no language suggesting that disgorgement awards under Subsections (d)(3)(A)(ii) and (d)(7) must be used to compensate victims. And it certainly does not provide that a showing of pecuniary harm is a prerequisite to such relief.

b. The *Liu* Court stated that, "[o]ver the years," courts in SEC enforcement suits "have occasionally awarded disgorgement in three main ways that test the bounds of equity practice: by [1] ordering the proceeds of fraud to be deposited in Treasury funds instead of disbursing them to victims, [2] imposing joint-and-several disgorgement liability, and [3] declining to deduct

even legitimate expenses from the receipts of fraud." 591 U.S. at 85. With respect to the second and third of those practices, new Subsection (d)(3)(A)(ii) incorporates substantially the same restrictions on disgorgement that the *Liu* Court found to be implicit in Subsection (d)(5). By contrast, nothing in new Subsection (d)(3)(A)(ii) restricts the uses to which disgorged funds may be put or makes pecuniary harm to investors a prerequisite to disgorgement.

i. With respect to the second of those practices, the *Liu* Court observed that the Commission sometimes had "sought to impose disgorgement liability on a wrongdoer for benefits that accrue to his affiliates, sometimes through joint-and-several liability, in a manner sometimes seemingly at odds with the common-law rule requiring individual liability for wrongful profits." 591 U.S. at 90. New Subsection (d)(3)(A)(ii) effectively incorporates that aspect of *Liu*. That provision authorizes the court to "require disgorgement under paragraph (7) of any unjust enrichment *by the person who received such unjust enrichment* as a result of such violation." 15 U.S.C. 78u(d)(3)(A)(ii) (emphasis added); see Pet. Br. 24 (recognizing that Congress appears to have included the italicized language in order to incorporate this aspect of *Liu*).

ii. With respect to the third practice referenced above, the *Liu* Court stated that "courts must deduct legitimate expenses before ordering disgorgement under § 78u(d)(5)." 591 U.S. at 91-92; see *id.* at 83 (explaining that courts have traditionally limited such "awards to the net profits from wrongdoing, that is, the gain made upon any business or investment, when both the receipts and payments are taken into the account") (citation and internal quotation marks omitted). That focus on net profits rather than gross receipts is likewise re-

flected in new Subsection (d)(3)(A)(ii), which authorizes disgorgement of "any unjust enrichment." 15 U.S.C. 78u(d)(3)(A)(ii). Since a wrongdoer is "enriched" only by the amount of his net gain, the text of Subsection (d)(3)(A)(ii) is naturally construed to require deduction of legitimate expenses in calculating a disgorgement award. See *Liu*, 591 U.S. at 79 (referring to the "profit-based measure of unjust enrichment") (citation omitted); Third Restatement § 51(4) (noting that as a general matter "the unjust enrichment of a conscious wrongdoer * * * is the net profit attributable to the underlying wrong").

This aspect of Subsection (d)(3)(A)(ii)'s text is consistent not only with *Liu*, but also with pre-*Liu* lower-court precedent that limited SEC disgorgement to a wrongdoer's net profits. In *Hateley* v. *SEC*, 8 F.3d 653 (9th Cir. 1993), for example, the court rejected a disgorgement order that "amounted to more than ten times the amount of * * * unjust enrichment." *Id.* at 656. The court explained that, because a disgorgement order "is the means by which the [defendants] are required to remedy the unjust enrichment," "the amount must be reasonable, *i.e.* approximately equal to the unjust enrichment." *Ibid.*

iii. The text of Subsection (d)(3)(A)(ii) codifies another important pre-existing limitation on disgorgement in SEC enforcement suits. Lower courts had previously recognized that disgorgement extends only to "property causally related to the wrongdoing," so that "the SEC generally must distinguish between legally and illegally obtained profits." *First City*, 890 F.2d at 1231; see Third Restatement § 51, cmt. f ("[A] court may deny recovery of particular elements of profit on the ground of remoteness."). Courts thus denied or limited disgorgement when, for example, there was a "clear

break in or considerable attenuation of the causal connection between the illegality and the ultimate profits." *First City*, 890 F.2d at 1232 (citing *SEC* v. *Manor Nursing Ctrs., Inc.*, 458 F.2d 1082 (2d Cir. 1972)); see, *e.g.*, *SEC* v. *MacDonald*, 699 F.2d 47, 53-54 (1st Cir. 1983) (en banc) (reversing a disgorgement award where public disclosure of material nonpublic information established a "cut-off date" for gains resulting from shares purchased based on that information). Subsection (d)(3)(A)(ii) codifies that rule by authorizing disgorgement only "of any unjust enrichment by the person who received such unjust enrichment *as a result of [the] violation*." 15 U.S.C. 78u(d)(3)(A)(ii) (emphasis added). And the various textual limits on disgorgement prevent it from functioning as an "unbounded" remedy, contra Pet. Br. 2, 27.

iv. By contrast, however, nothing in the text of new Subsection (d)(3)(A)(ii) or (d)(7) suggests that a disgorgement award must be used to compensate victims, or that a showing of pecuniary harm to investors is a prerequisite to such an award. See *SEC* v. *Spartan Sec. Grp., Ltd.*, 164 F.4th 1231, 1267 (11th Cir. 2026) (per curiam) (explaining that, because "Congress omitted any investor-benefit language from sections [78u](d)(3)(A)(ii) and (d)(7)," the court "presume[d]" that those provisions "lack the investor-benefit requirement Congress provided for in section [78u](d)(5)"). The word "disgorgement" in particular reflects an exclusive focus on the defendant's surrender of his unlawful profits, independent of any use to which the funds may subsequently be put. The body of lower-court case law that preceded the new provisions' enactment, which approved "disgorgement" awards in SEC enforcement suits and emphasized the public interest in ensuring that violators

do not profit from their wrongs, reinforces that natural understanding.

New Subsection (d)(3)(A) identifies the legal prerequisites to a disgorgement award. The defendant must be shown to have violated specified provisions of the securities laws, see 15 U.S.C. 78u(d)(3)(A), and to have "received * * * unjust enrichment as a result of such violation," 15 U.S.C. 78u(d)(3)(A)(ii). No language in those provisions can plausibly be read to require proof of pecuniary harm to investors. In addition, Section 78u(d)(3)(A)(ii) authorizes the district court to "require disgorgement under paragraph (7) of *any* unjust enrichment" that meets the stated criteria. *Ibid.* (emphasis added). That modifier provides a further reason to reject petitioner's atextual limitation on the scope of the courts' disgorgement authority.

3. There is no basis for petitioner's suggestion that Congress enacted new Subsections (d)(3)(A)(ii) and (d)(7) simply to clarify the applicable statute of limitations

In addition to adding new Subsections (d)(3)(A)(ii) and (d)(7), the 2021 amendments added new limitations periods for "Disgorgement," 15 U.S.C. 78u(d)(8)(A), and "Equitable remedies," 15 U.S.C. 78u(d)(8)(B). See Pub. L. No. 116-283, § 6501, 134 Stat. 4625-4626. Petitioner asserts (Br. 24) that the desire to establish new limitations periods was "the entire reason Congress amended Section 78u(d) in the first place." That argument does not withstand scrutiny.

If Congress had intended that SEC disgorgement claims would continue to be governed by Subsection (d)(5) as interpreted in *Liu*, but would be subject to a new and distinct limitations period, it could easily have accomplished that result. Without adding new Subsec-

tions (d)(3)(A)(ii) or (d)(7), which specifically authorize "disgorgement" and define the prerequisites to a disgorgement award, Congress could have enacted new limitations provisions applicable to "Disgorgement" and "Other equitable relief" (or "Equitable relief other than disgorgement") respectively. Congress did not need to enact new grants of authority to *award* disgorgement in order to establish a separate limitations period for disgorgement claims.

Petitioner also suggests (Br. 25) that, if Congress did not intend to require pecuniary harm to investors as a prerequisite to SEC disgorgement, it had no need to enact a statute of limitations for disgorgement claims, but could simply have assumed that the five-year period for "penalty" claims under 28 U.S.C. 2462 would apply. But the limitations periods established by Subsection (d)(8)(A) differ significantly from the period established by Section 2462. Whereas Section 2462's five-year limitations period runs "from the date when the claim *first* accrued," 28 U.S.C. 2462 (emphasis added), the five-year period specified by Subsection (d)(8)(A)(i) runs from "the *latest* date of the violation," 15 U.S.C. 78u(d)(8)(A)(i) (emphasis added). And while the period for seeking disgorgement in SEC enforcement suits is *generally* five years, the 2021 amendments establish a ten-year limitations period for disgorgement claims premised on certain specified statutory violations, see 15 U.S.C. 78u(d)(8)(A)(ii)(I)-(IV). That reticulated limitations scheme for disgorgement claims could not possibly have taken effect unless Congress separately enacted it.

***4. The Court should respect and enforce Congress's considered response, as reflected in new Subsections (d)(3)(A)(ii) and (d)(7), to this Court's decision in* Liu**

When this Court decided *Liu*, no statutory provision specifically authorized "disgorgement" in SEC enforcement suits or specified the terms on which disgorgement could be awarded. In arguing that disgorgement in such suits was permissible, the government relied on Section 78u(d)(5), which more generally authorizes "any equitable relief that may be appropriate or necessary for the benefit of investors." 15 U.S.C. 78u(d)(5). In determining whether and under what circumstances disgorgement could be awarded, the Court therefore of necessity canvassed a broad range of historical sources involving a wide variety of substantive legal claims.

Congress's subsequent enactment of Subsections (d)(3)(A)(ii) and (7) changed the law in two important respects. First, because Subsection (d)(3)(A)(ii) identifies substantive criteria for disgorgement, and neither of the two provisions uses the term "equitable relief," these provisions largely obviate the need in disgorgement cases for the sorts of wide-ranging historical inquiries in which the *Liu* Court engaged. Henceforth, the propriety of particular profits-based awards in SEC enforcement suits generally can be determined by construing and applying the statutory text. If a particular award would constitute "disgorgement" within the meaning of Subsections (d)(3)(A)(ii) and (d)(7), and the award satisfies the statutory conditions, the court's task is at an end.

Second, the Court should presume that Congress was aware of *Liu* when it amended Section 78u(d) to specifically authorize "disgorgement" and to establish

limitations on courts' authority to award that form of relief. Consistent with *Liu*, Subsection (d)(3)(A)(ii) limits disgorgement to (a) net profits (rather than gross receipts) that are (b) received by the person (rather than solely by a mere affiliate). See pp. 33-34, *supra*. By contrast, Subsections (d)(3)(A)(ii) and (d)(7) contain no language that could plausibly be construed either to require that disgorged funds be used to compensate injured investors, or to make pecuniary harm to investors a prerequisite to disgorgement. See *Spartan Sec. Grp.*, 164 F.4th at 1267 (observing that "[i]n no way does either provision limit where or to whom [disgorged] profits must go," and declining to "rewrite sections [78u](d)(3)(A)(ii) and (d)(7) to include an investor-benefit limitation where Congress did not provide for one"); see also 15 U.S.C. 78u-6(g)(3)(A)(i) (providing for deposit in the Investor Protection Fund of disgorged funds that are not "distributed to victims").

This Court does not "read into statutes words that aren't there." *Romag Fasteners, Inc.* v. *Fossil, Inc.*, 590 U.S. 212, 215 (2020); accord *Kousisis*, 605 U.S. at 124 (finding that the criminal wire-fraud statute, 18 U.S.C. 1343, is "agnostic about economic loss" because "[t]he statute does not so much as mention loss, let alone require it"). Subsections (d)(3)(A)(ii) and (d)(7) unambiguously reflect Congress's decision to incorporate some but not all of *Liu*'s restrictions on SEC disgorgement under Subsection (d)(5) into the revised statutory scheme. This Court should respect and enforce that congressional choice.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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MARCH 2026

APPENDIX

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APPENDIX

15 U.S.C. 78u provides:

Investigations and actions

(a) Authority and discretion of Commission to investigate violations

(1) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated, or, as to any act or practice, or omission to act, while associated with a member, formerly associated with a member, the rules of a registered clearing agency in which such person is a participant, or, as to any act or practice, or omission to act, while a participant, was a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm, a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm, or the rules of the Municipal Securities Rulemaking Board, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of such provisions, in the pre-

scribing of rules and regulations under this chapter, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

(2) On request from a foreign securities authority, the Commission may provide assistance in accordance with this paragraph if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that the requesting authority administers or enforces. The Commission may, in its discretion, conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. In deciding whether to provide such assistance, the Commission shall consider whether (A) the requesting authority has agreed to provide reciprocal assistance in securities matters to the Commission; and (B) compliance with the request would prejudice the public interest of the United States.

(b) Attendance of witnesses; production of records

For the purpose of any such investigation, or any other proceeding under this chapter, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Such

attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(c) Judicial enforcement of investigative power of Commission; refusal to obey subpena; criminal sanctions

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Injunction proceedings; authority of court to prohibit persons from serving as officers and directors; money penalties in civil actions; disgorgement

(1) Whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.

(2) AUTHORITY OF COURT TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND DIRECTORS.—In any proceeding under paragraph (1) of this subsection, the court may prohibit, conditionally or unconditionally, and

permanently or for such period of time as it shall determine, any person who violated section 78j(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(3) CIVIL MONEY PENALTIES AND AUTHORITY TO SEEK DISGORGEMENT.—

(A) AUTHORITY OF COMMISSION.—Whenever it shall appear to the Commission that any person has violated any provision of this chapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 78u-3 of this title, other than by committing a violation subject to a penalty pursuant to section 78u-1 of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to—

(i) impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation; and

(ii) require disgorgement under paragraph (7) of any unjust enrichment by the person who received such unjust enrichment as a result of such violation.

(B) AMOUNT OF PENALTY.—

(i) FIRST TIER.—The amount of a civil penalty imposed under subparagraph (A)(i) shall be determined by the court in light of the facts and circumstances. For each violation, the amount of

the penalty shall not exceed the greater of (I) $5,000 for a natural person or $50,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation.

(ii) SECOND TIER.—Notwithstanding clause (i), the amount of a civil penalty imposed under subparagraph (A)(i) for each such violation shall not exceed the greater of (I) $50,000 for a natural person or $250,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(iii) THIRD TIER.—Notwithstanding clauses (i) and (ii), the amount of a civil penalty imposed under subparagraph (A)(i) for each violation described in that subparagraph shall not exceed the greater of (I) $100,000 for a natural person or $500,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(aa) the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(bb) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(C) PROCEDURES FOR COLLECTION.—

(i) PAYMENT OF PENALTY TO TREASURY.—A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u-6 of this title.

(ii) COLLECTION OF PENALTIES.—If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(iii) REMEDY NOT EXCLUSIVE.—The actions authorized by this paragraph may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(iv) JURISDICTION AND VENUE.—For purposes of section 78aa of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this chapter.

(D) SPECIAL PROVISIONS RELATING TO A VIOLATION OF A CEASE-AND-DESIST ORDER.—In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 78u-3 of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(4) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged under paragraph (7) as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.

(5) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.

(6) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

(A) IN GENERAL.—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(B) DEFINITION.—For purposes of this paragraph, the term "person participating in an offering of penny stock" includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to in-

duce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

(7) DISGORGEMENT.—In any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement.

(8) LIMITATIONS PERIODS.—

(A) DISGORGEMENT.—The Commission may bring a claim for disgorgement under paragraph (7)—

(i) not later than 5 years after the latest date of the violation that gives rise to the action or proceeding in which the Commission seeks the claim occurs; or

(ii) not later than 10 years after the latest date of the violation that gives rise to the action or proceeding in which the Commission seeks the claim if the violation involves conduct that violates—

(I) section 78j(b) of this title;

(II) section 77q(a)(1) of this title;

(III) section 80b-6(1) of this title; or

(IV) any other provision of the securities laws for which scienter must be established.

(B) EQUITABLE REMEDIES.—The Commission may seek a claim for any equitable remedy, including for an injunction or for a bar, suspension, or cease and desist order, not later than 10 years after the latest date on which a violation that gives rise to the claim occurs.

(C) CALCULATION.—For the purposes of calculating any limitations period under this paragraph with respect to an action or claim, any time in which the person against which the action or claim, as applicable, is brought is outside of the United States shall not count towards the accrual of that period.

(9) RULE OF CONSTRUCTION.—Nothing in paragraph (7) may be construed as altering any right that any private party may have to maintain a suit for a violation of this chapter.

(e) Mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration state-

ment as provided in subsection (d) of section 78o of this title, (2) any national securities exchange or registered securities association to enforce compliance by its members and persons associated with its members with the provisions of this chapter, the rules, regulations, and orders thereunder, and the rules of such exchange or association, or (3) any registered clearing agency to enforce compliance by its participants with the provisions of the rules of such clearing agency.

(f) Rules of self-regulatory organizations or Board

Notwithstanding any other provision of this chapter, the Commission shall not bring any action pursuant to subsection (d) or (e) of this section against any person for violation of, or to command compliance with, the rules of a self-regulatory organization or the Public Company Accounting Oversight Board unless it appears to the Commission that (1) such self-regulatory organization or the Public Company Accounting Oversight Board is unable or unwilling to take appropriate action against such person in the public interest and for the protection of investors, or (2) such action is otherwise necessary or appropriate in the public interest or for the protection of investors.

(g) Consolidation of actions; consent of Commission

Notwithstanding the provisions of section 1407(a) of title 28, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.

(h) Access to records

(1) The Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] shall apply with respect to the Commission, except as otherwise provided in this subsection.

(2) Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3405 or 3407], the Commission may have access to and obtain copies of, or the information contained in financial records of a customer from a financial institution without prior notice to the customer upon an ex parte showing to an appropriate United States district court that the Commission seeks such financial records pursuant to a subpena issued in conformity with the requirements of section 19(b)[1] of the Securities Act of 1933, section 21(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78u(b)], section 42(b) of the Investment Company Act of 1940 [15 U.S.C. 80a-41(b)], or section 209(b) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-9(b)], and that the Commission has reason to believe that—

(A) delay in obtaining access to such financial records, or the required notice, will result in—

(i) flight from prosecution;

(ii) destruction of or tampering with evidence;

(iii) transfer of assets or records outside the territorial limits of the United States;

(iv) improper conversion of investor assets; or

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[1] See References in Text note below.

(v) impeding the ability of the Commission to identify or trace the source or disposition of funds involved in any securities transaction;

(B) such financial records are necessary to identify or trace the record or beneficial ownership interest in any security;

(C) the acts, practices or course of conduct under investigation involve—

(i) the dissemination of materially false or misleading information concerning any security, issuer, or market, or the failure to make disclosures required under the securities laws, which remain uncorrected; or

(ii) a financial loss to investors or other persons protected under the securities laws which remains substantially uncompensated; or

(D) the acts, practices or course of conduct under investigation—

(i) involve significant financial speculation in securities; or

(ii) endanger the stability of any financial or investment intermediary.

(3) Any application under paragraph (2) for a delay in notice shall be made with reasonable specificity.

(4)(A) Upon a showing described in paragraph (2), the presiding judge or magistrate judge shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution involved from disclosing that rec-

ords have been obtained or that a request for records has been made.

(B) Extensions of the period of delay of notice provided in subparagraph (A) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection or section 1109(a), (b)(1), or (b)(2) of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3409(a), (b)(1), or (b)(2)].

(C) Upon expiration of the period of delay of notification ordered under subparagraph (A) or (B), the customer shall be served with or mailed a copy of the subpena insofar as it applies to the customer together with the following notice which shall describe with reasonable specificity the nature of the investigation for which the Commission sought the financial records:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpena were supplied to the Securities and Exchange Commission on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under section 21(h) of the Securities Exchange Act of 1934 that (state reason). The purpose of the investigation or official proceeding was (state purpose)."

(5) Upon application by the Commission, all proceedings pursuant to paragraphs (2) and (4) shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

(6) Repealed. Pub. L. 114-113, div. O, title VII, § 708, Dec. 18, 2015, 129 Stat. 3030.

(7)(A) Following the expiration of the period of delay of notification ordered by the court pursuant to paragraph (4) of this subsection, the customer may, upon motion, reopen the proceeding in the district court which issued the order. If the presiding judge or magistrate judge finds that the movant is the customer to whom the records obtained by the Commission pertain, and that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), it may order that the customer be granted civil penalties against the Commission in an amount equal to the sum of—

(i) $100 without regard to the volume of records involved;

(ii) any out-of-pocket damages sustained by the customer as a direct result of the disclosure; and

(iii) if the violation is found to have been willful, intentional, and without good faith, such punitive damages as the court may allow, together with the costs of the action and reasonable attorney's fees as determined by the court.

(B) Upon a finding that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), the court, in its discretion, may also or in the alternative issue injunctive relief to require the Commission to comply with this subsection with respect to any subpena which the Commission issues in the future for financial records of such customer for purposes of the same investigation.

(C) Whenever the court determines that the Commission has failed to comply with this subsection, other

than paragraph (1), and the court finds that the circumstances raise questions of whether an officer or employee of the Commission acted in a willful and intentional manner and without good faith with respect to the violation, the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. After investigating and considering the evidence submitted, the Office of Personnel Management shall submit its findings and recommendations to the Commission and shall send copies of the findings and recommendations to the officer or employee or his representative. The Commission shall take the corrective action that the Office of Personnel Management recommends.

(8) The relief described in paragraphs (7) and (10) shall be the only remedies or sanctions available to a customer for a violation of this subsection, other than paragraph (1), and nothing herein or in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] shall be deemed to prohibit the use in any investigation or proceeding of financial records, or the information contained therein, obtained by a subpena issued by the Commission. In the case of an unsuccessful action under paragraph (7), the court shall award the costs of the action and attorney's fees to the Commission if the presiding judge or magistrate judge finds that the customer's claims were made in bad faith.

(9)(A) The Commission may transfer financial records or the information contained therein to any government authority if the Commission proceeds as a transferring agency in accordance with section 1112 of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3412],

except that the customer notice required under section 1112(b) or (c) of such Act [12 U.S.C. 3412(b) or (c)] may be delayed upon a showing by the Commission, in accordance with the procedure set forth in paragraphs (4) and (5), that one or more of subparagraphs (A) through (D) of paragraph (2) apply.

(B) The Commission may, without notice to the customer pursuant to section 1112 or the Right to Financial Privacy Act of 1978 [12 U.S.C. 3412], transfer financial records or the information contained therein to a State securities agency or to the Department of Justice. Financial records or information transferred by the Commission to the Department of Justice or to a State securities agency pursuant to the provisions of this subparagraph may be disclosed or used only in an administrative, civil, or criminal action or investigation by the Department of Justice or the State securities agency which arises out of or relates to the acts, practices, or courses of conduct investigated by the Commission, except that if the Department of Justice or the State securities agency determines that the information should be disclosed or used for any other purpose, it may do so if it notifies the customer, except as otherwise provided in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], within 30 days of its determination, or complies with the requirements of section 1109 of such Act [12 U.S.C. 3409] regarding delay of notice.

(10) Any government authority violating paragraph (9) shall be subject to the procedures and penalties applicable to the Commission under paragraph (7)(A) with respect to a violation by the Commission in obtaining financial records.

(11) Notwithstanding the provisions of this subsection, the Commission may obtain financial records from a financial institution or transfer such records in accordance with provisions of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].

(12) Nothing in this subsection shall enlarge or restrict any rights of a financial institution to challenge requests for records made by the Commission under existing law. Nothing in this subsection shall entitle a customer to assert any rights of a financial institution.

(13) Unless the context otherwise requires, all terms defined in the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] which are common to this subsection shall have the same meaning as in such Act.

(i) Information to CFTC

The Commission shall provide the Commodity Futures Trading Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any broker or dealer registered pursuant to section 78o(b)(11) of this title, any exchange registered pursuant to section 78f(g) of this title, or any national securities association registered pursuant to section 78o-3(k) of this title.